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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/525,048

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Joachim Pelka

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EXAMINER

COOLMAN, VAUGHN

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/525,048	PELKA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vaughn T. Coolman	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two non-steerable wheels of claim 1, the adjustable position of the seat relative to the fork [frame?] of claim 7, and the two steerable wheels of claim 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claim 3 is objected to because of the following informalities: line 3 recites “of which tubes in relation to one another”. Examiner respectfully suggests the insertion of the word “the” between the words “which” and “tubes” in order to render the claim less confusing.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

**The following is a quotation of the first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 3, 4, and 8 are rejected under 35 U.S.C. 112, first paragraph**, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 3 recites the limitation of two tubes having different diameters, however, the examiner is wondering how oval-shaped tubes, as the specification describes the two tubes, can have different diameters, as diameter is a mathematical/geometrical term restricted to use in circular applications? Furthermore, a single oval can have multiple radii; examiner respectfully suggests defining the oval shape more clearly in the claim in order to clarify the scope of the claim limitation.

Claim 4 recites three clamping elements (13-15), examiner is unsure as to the operability of the clamping mechanism shown in FIGS 2 and 3 without the screw/bolt element (no number).

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Examiner understands the bolt and the internal threads of item 15 to provide the force that causes item 14 to be forced into positive contact with the tube 11.

Claim 8 recites the limitation of the frame being “essentially formed by two tubes” running “parallel to each other” and “arranged concentrically”. Examiner respectfully suggests that two tubes would result in only half of the frame being operable. How are the two steerable wheels supported by the two tubes? Are the two tubes parallel or coincident/coaxial? In what manner is the seat supported by only the two tubes? Furthermore, the tubes being connected via the seat only confuses the matter more.

**The following is a quotation of the second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation “two non-steerable wheels which are connection in relation to each other to the frame in a wheelbase”. The structure being claimed is totally unclear due to the translation of the original application.

Claim 3 recites the limitation "the relative position" in lines 2-3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation “can be fixed by three clamping elements”. The words “can be” render the scope of the claim indefinite, especially taken in conjunction with the

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limitation of claim 3, wherein "at least one clamping element" is recited. Examiner is confused as to the lower and/or upper limits of the clamping elements being claimed.

Claim 5 recites the limitation "the tubes" in line 4. There is insufficient antecedent basis for this limitation in the claim. Examiner respectfully suggests changing the dependency of the claim from claim 1 to claim 3 in order to provide antecedent basis for the limitation.

Claim 6 recites the limitation "the fork" in line 3. There is insufficient antecedent basis for this limitation in the claim. Examiner respectfully suggests changing the dependency of the claim from claim 1 to claim 5 in order to provide antecedent basis for the limitation.

Claim 7 recites the limitation "the fork" in line 2. There is insufficient antecedent basis for this limitation in the claim. Examiner respectfully suggests a possible typographical error resulted in the word "fork" being substituted for the word "frame".

All claims not described above are rejected as depending from a rejected base claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mentessi et al (U.S. Patent No. 5,294,141) in view of Tunkers (GB 2,141,980 A).**

[claim 1] Mentessi discloses (see FIGS 1-10) a wheelchair (10), having a frame, at least one steerable wheel (82) mounted rotatably about a horizontal axis of rotation (the axle of the

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wheel) and two non-steerable wheels (80) which are connected in relation to each other to the frame in a wheelbase (obvious), and having a seat (10) which is fastened to the frame and has a backrest (12), characterized in that the wheelbase can be adjusted in a variable manner, and in that the distance between the axis of rotation and the frame (20) can be adjusted (utilizing the plurality of axle mountings in the fork as is common in the art, shown in FIGS 1, 2, 6, and 10).

Mentessi does not disclose the wheelchair being an electric wheelchair, however, Mentessi does state that an object of his invention is for the wheelchair to have the ability to adapt to aftermarket conversions (Column 1, lines 51-52). Furthermore, the examiner notes that it is old and well known and would be obvious to one of ordinary skill in the art to provide electric drive means as an aftermarket conversion for a wheelchair as described by Mentessi.

In the alternative, Tunkers teaches an adjustable frame (9) electrically powered wheelchair. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Mentessi with electric power drive as taught by Tunkers, since such a modification would provide the advantage of allowing a user that has limited use of his arms to operate the wheelchair.

Mentessi fails to disclose the variable wheelbase as being an infinitely variable adjustment. However, the wheelchair shown by Tunkers teaches an infinitely variable adjustment (page 1, line 83) for the wheelbase. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Mentessi with the infinitely variable adjustability as taught by Tunkers, since such a modification would provide, according to Tunkers, the advantage of increasing the stability of the wheelchair to prevent tipping (page 2, lines 77-80).

**[claim 2]** Mentessi further shows that in order to adjust the wheelbase, the frame is telescopic (shown in FIGS 1, 2, 5, 6, and 10; items 74, 110, 112).

**[claim 3]** Mentessi further shows the frame including at least two concentrically arranged tubes (74 and the front tube having holes 112 therein) of different diameters, the relative position of which the tubes in relation to one another can be fixed (utilizing 110 and 112). Mentessi does not disclose the fixing of the tubes as being accomplished by a clamping element.

However, Tunkers further teaches (page 1, lines 103-107) that at least one clamping element can be used to fix the infinitely variable telescoping adjustment of the frame.

**[claim 5]** Mentessi further shows the at least one steerable wheel (82) being mounted in a fork, as is common in the art, in a manner such that it can rotate about *the* horizontal axis of rotation (axle), and that the fork is connected to one of the tubes (the front tube having holes 112 therein) in a manner such that it can pivot about a vertical axis (“caster mounted front wheels 82” – column 4, lines 18-19).

**[claim 6]** Mentessi further shows that in order to adjust the distance between the axis of rotation (axle of wheel 82) and the frame (20), a plurality of vertically spaced holes (shown in FIG 1) is provided at the lower end of a fork (caster mount) in which the at least one steerable wheel (82) is mounted.

**[claim 7]** Mentessi further shows that the position of the seat (10) in relation to the fork [frame] can be adjusted (shown in FIGS 1-2).



**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mentessi in view of Tunkers and further in view of Robertson et al (U.S. Patent No. 5,421,598) and Roberts (U.S. Patent No. 6,308,804 B1).**

[claim 4] Mentessi in view of Tunkers discloses all of the elements of the claimed invention as described above except for the relative position of the tubes being fixed by three clamping elements. Tunkers does teach that a “clamping cam” can be used to fix the relative positions of the two tubes.

Robertson teaches the relative position of two tubes (308, 310) of different diameters being clamped fixed in relation to one another by a clamping element described as “a compression clamp” including “a levered release nut”. Examiner notes that a levered release nut describes a quick release clamping mechanism, similar to the type found on a bicycle seat post, which relies on cam action for the clamping force. As such, the compression clamp described by Robertson would include at least three elements, similar to the clamping mechanism shown by Roberts in FIG 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Mentessi as modified by Tunkers, with the three clamping elements as taught by Robertson and evidenced by Roberts, since such a modification would provide the advantage of, according to Robertson, allowing the relative position of the tubes to be adjusted by the user without any external tools (Column 10, lines 1-2).

**Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tunkers in view of Summers et al (U.S. Patent No. 4,730,842).**

**[claim 1]** Tunkers discloses (see FIGS 1 and 2) a wheelchair (10), particularly an electric wheelchair, having a frame (9), at least one steerable wheel (4) mounted rotatably about a horizontal axis of rotation (7) and two non-steerable wheels (2) which are connected in relation to each other to the frame in a wheelbase (obvious), and having a seat (24) which is fastened to the frame and has a backrest (shown in FIG 1), characterized in that the wheelbase can be adjusted in an infinitely variable manner (page 1, line 83).

Tunkers fails to disclose that the distance between the horizontal axis of rotation and the frame can be adjusted. However, Summers teaches an adjustable wheelchair wherein the distance between a horizontal axis of rotation (axle 68 – not shown) of a steerable wheel (64 or 65) and the frame (20) can be adjusted (Column 4, lines 1-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Tunkers, with the adjustability as taught by Summers, since such a modification would provide the advantage of the ability to mount wheels of varying sizes without adversely altering the orientation of the seat with respect to a horizontal plane.

**[claim 8]** Tunkers further shows (FIG 2) that the frame (9) is essentially formed by two tubes (10, 11) which run parallel (and coincident) to each other, are each arranged concentrically, and are connected to each another via the seat (24), and two steerable wheels (3, 4) are provided.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Charles (U.S. Patent No. 4,358,125), Rogers et al (U.S. Patent No. 5,782,483), and Kendrick et al (U.S. Patent No. 4,968,050) teach adjustable wheel chairs wherein the wheelbase is infinitely variable.

Geiger et al (U.S. Patent No. 5,360,224) teaches a fork for a steerable wheel of a wheelchair including a plurality of vertically spaced holes for mounting said wheel.

Krumm (U.S. Patent No. 5,584,494) teaches an adjustable frame.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
vtc  
05/22/06

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